

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

PPS SERVICE GROUP, LLC,

Plaintiff,

vs.

ADAM ECKERT and ROBERT ROBY,

Defendants.

Case No.1:18-CV-00727

Judge Michael R Barrett

ORDER

This matter is before the Court on the combined Order and Report and Recommendation (R&R) filed by the Magistrate Judge on August 20, 2019 (Doc. 71). The Magistrate Judge's Order grants Plaintiff's Rule 56(d) Motion to Defer Consideration (Doc. 39) of Defendant Robert Roby's Motion for Summary Judgment (Doc. 23) and denies as moot, subject to refiling, various non-dispositive motions (Docs. 3, 15, 21, 25, 45, 46, and 57). Her R&R recommends that Defendant Robert Roby's Motion for Summary Judgment (Doc. 23) be denied without prejudice to refiling once the limited discovery contemplated by Plaintiff's successful Rule 56(d) Motion to Defer Consideration (Doc. 39) is complete.

Proper notice was given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). In this regard, Plaintiff requested—and received—two separate

extensions of time to file objections to this R&R (and one other¹ filed on the same date). (See Doc. 72 & 8/27/2019 Notation Order and Doc. 75 & 9/12/2019 Notation Order). Yet Plaintiff's Objection, filed September 25, 2019, is not an objection to the Magistrate Judge's R&R. (See Doc. 86). Rather, it is an objection to the Magistrate Judge's Order regarding Plaintiff's Motion for an Award of Costs and Fees Pursuant to Fed. R. Civ. P. 4(d) (Doc. 15, filed December 12, 2018) against Defendant Adam Eckert, which was unopposed, and Plaintiff's Motion for Contempt (Doc. 25, filed January 30, 2019) against Defendant Robert Roby, which was fully briefed. Both of these motions are non-dispositive. And both, along with five other discovery-related motions, were denied as moot, *subject to refiling*, to the extent the issues raised therein were not resolved after a status conference by telephone set for September 3, 2019. (See Doc. 71 at PageID 1297). According to the docket in this civil action, the Status Conference took place as scheduled, and, the day after, this matter was referred to mediation. (See 09/03/2019 Minute Entry, 09/04/2019 Referral and 09/05/2019 Order Setting Settlement Conference). Regrettably, the mediation was unsuccessful. (See 09/18/2019 Minute Entry).

Upon consideration of the foregoing, the Court finds nothing "clearly erroneous or contrary to law" in the Magistrate Judge's Order concerning the two motions Plaintiff references, which is the appropriate standard of review under 28 U.S.C. § 636(b)(1)(A). See *also* Fed. R. Civ. P. 72(a). Accordingly, Plaintiff's Objections to the

¹ (See Doc. 69).

Magistrate Judge's Order (Doc. 71) are **OVERRULED**.² Additionally, because no objections have been filed regarding the Magistrate Judge's R&R (Doc. 71), it is hereby **ACCEPTED and ADOPTED**. Consistent with the recommendation of the Magistrate Judge, Defendant Robert Roby's Motion for Summary Judgment (Doc. 23) is **DENIED WITHOUT PREJUDICE** to refiling once the limited discovery contemplated by Plaintiff's successful Rule 56(d) Motion to Defer Consideration (Doc. 39) is complete.

IT IS SO ORDERED.

s/ Michael R. Barrett
HON. MICHAEL R. BARRETT
UNITED STATES DISTRICT JUDGE

² As earlier noted, however, the Magistrate Judge's Order does not restrict refiling these motions if their proponent believes the issues raised therein were not resolved during the September 3, 2019 Status Conference, and by extension, the September 18, 2019 Settlement Conference.